

ESTTA Tracking number: **ESTTA714871**

Filing date: **12/16/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	86325151
Applicant	Midlands Technical College
Applied for Mark	YOU CAN GET ANYWHERE FROM HERE
Correspondence Address	SARA C KANOS NEXSEN PRUET LLC 55 E CAMPERDOWN WAY, SUITE 400 GREENVILLE, SC 29601 UNITED STATES skanos@nexsenpruet.com, mmann@nexsenpruet.com, shutto@nexsenpruet.com
Submission	Applicants Request for Remand and Amendment
Attachments	Request for Remand (Anywhere).pdf(92078 bytes ) Consent Agreement.pdf(479879 bytes )
Filer's Name	Sara Centioni Kanos
Filer's e-mail	skanos@nexsenpruet.com, mmann@nexsenpruet.com, shutto@nexsenpruet.com
Signature	/sara centioni kanos/
Date	12/16/2015

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re application of: Midlands Technical College  
Filed: July 1, 2014  
Mark: YOU CAN GET ANYWHERE FROM HERE  
Examining Attorney: Donald Johnson  
Law Office: 104

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<b>Request for Remand To Consider Consent Agreement</b>	Ex Parte Appeal No. <u>86325151</u>
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Applicant hereby requests that this appeal be temporarily suspended and that the Application be remanded to the Examining Attorney for consideration of a consent agreement relevant to the Examining Attorney's final refusal based upon an alleged likelihood of confusion.

As the record reflects, the Examining Attorney denied Applicant's request for reconsideration on October 14, 2015 based on U.S. Registration No. 2052892 for YOU CAN GET THERE FROM HERE. In response, Applicant initiated this proceeding. However, shortly after Applicant's filing of its Appeal Brief (on December 13, 2015), Applicant secured a consent agreement from the listed owner of the cited Registration, which is attached.

While this evidence is clearly relevant to Applicant's appeal, a remand to the Examining Attorney would provide him a better opportunity to consider all the factors relevant to the issue of likelihood of confusion.<sup>1</sup> Furthermore, the TBMP is clear that the Board "*will grant* a request to suspend and remand for consideration of a consent agreement if the request, accompanied by the consent agreement, is filed *at any time prior to the rendering of the Board's final decision* on the appeal." *See*

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<sup>1</sup> This consent agreement was procured just one day following the Applicant's Appeal Brief deadline. Moreover, this request was filed just two days following that deadline. Accordingly, the Examining Attorney has ample time to consider the consent agreement without imparting significant delay to the *ex parte* appeal schedule.

TBMP §1207.02 (Examples of circumstances that have been found to constitute good cause for remand.) (emphasis added).

This request is timely made in view of the Board's procedural precedent, especially considering the very recent filing of Applicant's Appeal Brief.

Respectfully submitted, December 16, 2015

NEXSEN PRUET, LLC



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ATTORNEYS FOR APPLICANT

### CONSENT AGREEMENT

This Agreement is made to be effective this 15<sup>th</sup> December, 2015, by and between Midlands Technical College, a state agency established by the South Carolina Code of Laws, 59-53-20, in the State of South Carolina and with offices at 1260 Lexington Drive, West Columbia, South Carolina 29170 and Full Sail, LLC d/b/a Full Sail University, a Florida Limited Liability Company with offices at 3300 University Boulevard, Winter Park, Florida, 32792 ("Full Sail").

WHEREAS, Full Sail owns the service mark YOU CAN GET THERE FROM HERE used in connection with educational services, namely, offering courses of instruction in art, music, film, video, television, and digital media ("Full Sail Service Mark"), which mark was first used in commerce in December 1995 and federal registration of which was obtained on April 15, 1997 (US Reg. No. 2052892) and renewed thus far through 2017, and which registration is incontestable;

WHEREAS, Midlands Technical College uses the service mark YOU CAN GET ANYWHERE FROM HERE in connection with educational services, namely, providing courses of instruction at the college level and distribution of course material in connection therewith; educational services, namely, providing on-line courses of instruction at the college level; educational services, namely, conducting distance learning instruction at the college level; educational services, namely, conducting classes in the field of career development and distribution of training material in connection therewith; educational services, namely, conducting classes in the field of personal development and distribution of course and educational materials in connection therewith ("Midlands Service Mark"), which mark was first used in commerce before January 1 1980; and

WHEREAS, Midlands Technical College has applied for federal registration of its Midlands Technical College Service Mark;

Now therefore, for good and valuable consideration, receipt of which is acknowledged, The parties agree as follows:


1. The parties hereby assert that they know of no instances of actual confusion of students, prospective students or parents of prospective students of their respective institutions caused by the use of Full Sail Service Mark and Midlands Service Mark;
2. In view of (1) their long concurrent use of Full Sail Service Mark and Midlands Service Mark with no known instances of actual confusion having resulted therefrom, (2) that Full Sail Service Mark and Midlands Service Marks are slogans and not legal names or trade names of their respective organizations, (3) the significant effort and financial commitment consumers make in selecting and attending a higher educational institution, (4) the differences in their respective service marks and the use by others of similar marks, (5) the highly specialized nature of the curricula of Full Sail versus the general manufacturing vocational nature of the curricula of Midlands Technical College, and (6) the fact that Midlands Technical College is an agency of the State of South Carolina and cannot expand its physical presence outside that state, the parties therefore believe consumers are not likely to be confused, to be deceived, or to be mistaken as to the

source of the services offered by Midlands Technical College and Full Sail when those services are offered in connection with their respective service marks.


3. In the event either party hereto encounters an instance of actual customer confusion associated with use of their respective marks, that is, a potential student or parent of a potential student, it shall immediately redirect that consumer to the other party, and shall promptly notify the other party of the identity of such consumer and the facts surrounding the instance of actual confusion. The parties shall then take such additional steps as are reasonable in view of the facts of the instance so that confusion does not continue. Use of the Midlands Technical College Service Mark and Full Sail Service Mark on merchandise or on websites controlled by the parties shall include identification of the owner of the service mark by name or logo or both.
4. Each party shall make this Agreement known to its successors and assigns prior to assignment of their respective Service Marks.
5. Full Sail shall make no objection to and shall not oppose registration of the Midlands Technical College Service Mark by Midlands Technical College. Midlands Technical College shall not seek to have the Full Sail Service Mark cancelled.
6. Nothing herein prohibits Full Sail from expanding its curricula or its presence into other states and territories of the United States, including South Carolina.
7. This Agreement shall terminate on the express or *de facto* abandonment by either party of its service mark. *De facto* abandonment is presumed by absence of use for two years or immediately upon cessation of business by either party.
8. This Agreement constitutes the entire agreement of the parties and supersedes all previous understanding and promises.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement to be legally binding and effective as of the date first written above.

As to Midlands Technical College:

By:   
Name: Ronald L. Rhames  
Title: President

As to Full Sail LLC:

By:   
Name: Edward E. Haddock Jr.  
Title: Co-Chairman, CEO